

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF WYOMING

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4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 12-CR-216-F

6 vs.

CHEYENNE, WYOMING

7 AJAY JARIWALA,

April 29, 2013

9:00 a.m.

8 Defendant.

9 -----
10 TRANSCRIPT OF HEARING PROCEEDINGS
ALL PENDING MOTIONS

11 BEFORE THE HONORABLE NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE

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1 (Proceedings commenced 9:00 a.m., April 29, 2013.)

2 THE CLERK: In criminal matter Case

3 No. 12-CR-216-2-F, United States of America versus Ajay

4 Jariwala, set today for a motion hearing.

5 Counsel, please state your appearances.

6 MR. ANDERSON: Jim Anderson and Bob Murray on behalf
7 of the United States. Also seated at counsel table is Paul
8 Claflin, Special Agent with ATF, and we will be designating him
9 our case agent for purposes of Rule 615.

10 THE COURT: Good morning.

11 MR. STEINBERG: Morning, Judge. My name is Harvey
12 Steinberg. I appear with and on behalf of the Defendant Ajay
13 Jariwala who is present in court standing right now. And also
14 present at counsel table standing to my right is Mr. Ariel
15 Benjamin and Mr. Matt Giacomini, both lawyers from my office.

16 THE COURT: As announced by the courtroom deputy, we
17 have various motions filed by the defendant.

18 Mr. Steinberg, how would you like to proceed? I don't
19 know if you wish to argue some or all of the motions, if you
20 wanted to split time with your colleagues, but I will leave
21 that to you.

22 MR. STEINBERG: Perhaps I could help facilitate
23 resolution of most of the motions that are time consuming.
24 One, the defense had filed motions to suppress statements. It
25 is our position based on review of the videotapes as well as

1 the audiotapes that we will withdraw that motion.

2 We had also filed a motion to suppress fruits of a
3 search warrant dealing with search of cell phone that was taken
4 from the defendant at the time of his arrest. The Government
5 has indicated that they don't intend to introduce any of the
6 fruits that -- of that search during the course and scope of
7 their case in chief, and therefore, that motion, I believe, is
8 moot.

9 THE COURT: Is that correct?

10 MR. ANDERSON: That's correct, Your Honor, the United
11 States, as we indicated in our response to the Court, found
12 little of evidentiary value on the cell phone. I have
13 represented to defense counsel that, trials being what they
14 are, I can't foresee the future. I don't anticipate using any
15 of that information off the cell phone during our case in
16 chief. We are continuing to analyze it. Should something come
17 up, I will certainly notify the defense, but at this point we
18 don't anticipate using any of that material off the phone
19 during our case in chief.

20 And I can't anticipate what might happen during
21 cross-examination of any defense witness, but at this point we
22 think that Mr. Steinberg -- what Mr. Steinberg has represented
23 is substantially correct.

24 THE COURT: All right. Thank you, Mr. Anderson.

25 MR. ANDERSON: It is correct.

1 MR. STEINBERG: Judge, we had filed a motion for
2 disclosure of confidential informant, but I don't think there
3 will be anything that will come of that. I don't think the
4 Government intends to call that person, or if they do, then
5 there's no issue as well.

6 THE COURT: All right. So do you consider that mooted
7 or withdrawn, Mr. Steinberg?

8 MR. STEINBERG: Mooted.

9 THE COURT: All right. Thank you.

10 MR. STEINBERG: And now if I might approach the
11 lectern.

12 THE COURT: Please do.

13 MR. STEINBERG: Judge, still pending is the motion to
14 continue. And I had advised counsel that -- we had filed a
15 document in support of our motion to continue and we had done
16 that under seal. I had advised him prior to the filing of that
17 document that we intended to do that, and he was gracious
18 enough to say he did not object, and I confirmed with him today
19 that we had done that.

20 I am in an uncomfortable position and I will tell you
21 why. I have been doing this perhaps a lot longer than I should
22 and maybe that's part of the problem. I can honestly say in
23 the 35 years plus of my practice I have never tried a case
24 where I haven't read every bit of discovery. I think every
25 defendant charged with a crime, especially a situation where

1 he's looking at the type of mandatory sentence that this
2 defendant is looking at, he is entitled to, pursuant to his
3 Sixth Amendment rights, not only zealous but prepared counsel.

4 And there is no way I could have sifted through, let
5 alone digested, I'm guessing close to 70,000 pages of discovery
6 as well as multiple hours of videotapes and audiotapes in the
7 time frame that we have had those. I think that we received
8 the bulk of discovery I want to say on or about February 19th,
9 Counsel correct me, and then there's been other discovery
10 that's come in during the course of preparations.

11 And there's just no way any lawyer, any lawyer, and I
12 want to say that clearly, could have adequately prepared this
13 case in the short time frame. There's no way. I was doing
14 math the other day, and I think that if we did 240 pages a day,
15 which is difficult reading in terms of whenever you're reading
16 discovery for the first time, it is more difficult than if you
17 read it the second or third times, and most lawyers like to at
18 least go through discovery several times because the first time
19 you try to get an overview and the second time you look at it
20 with a more, if you will -- I hate to use this term --
21 jaundiced eye in terms of preparation. There's no way anyone
22 could have done it in the short time frame.

23 And that assumes one doesn't have other commitments.
24 And I would suggest to you if I didn't have other commitments I
25 probably wouldn't have been the right choice of counsel for

1 this type of case. This is a complicated case in terms of the
2 origin of the fire from our perspective. There's investigation
3 that needs to be done, and there's overall preparation.

4 I don't want you to think that the defense has been
5 dilatory in its efforts. Because of the impending trial that
6 was set, we jumped on this immediately, and we have dedicated,
7 perhaps to the detriment of other clients, amounts of time to
8 try to prepare for this. And I am simply not ready. And
9 again, I'm going to reiterate this: I have never been in this
10 situation where I had to tell the Court that I am not prepared
11 for a trial. But I want the record to be clear, if this
12 proceeds to trial on May 13th, I am of the humble opinion that
13 it will be a sham and farce from the defense's side because the
14 defendant will be represented by counsel who did not have
15 adequate time to prepare, not through lack of effort by
16 counsel, but simply the constraints of the time frame that was
17 placed upon counsel and this defense team.

18 And I understand there are competing interests, Judge,
19 and I don't mean to suggest there aren't competing interests.
20 And I know that this Court and the public has an interest in
21 making sure that cases, if you will, are tried in an
22 expeditious fashion. But I think the Constitution trumps, and
23 the Sixth Amendment to this Constitution that we live under
24 guarantees a defendant have effective counsel, and, at the
25 minimum, effective counsel is defined as prepared counsel.

1 And as I said, I cannot be prepared and no lawyer, no
2 lawyer who is facing this kind of situation -- excuse me --
3 this kind of trial, could be adequately prepared under the
4 circumstances.

5 I have nothing further.

6 THE COURT: Thank you.

7 Mr. Anderson.

8 MR. ANDERSON: Briefly in response, Your Honor, the
9 discovery in this matter is voluminous. There's a lot of it.
10 I think at last count there was about 40 to 45 gigabytes,
11 perhaps a little more, of discovery. But a lot of that, Judge,
12 when you start talking about digital size, that really is quite
13 meaningless, because, for instance, your typical jpeg file,
14 photograph, takes up an awful lot of space. To say there's 80
15 or 70,000 pages of documents is really misleading as well.

16 I am not accusing Mr. Steinberg of trying to mislead
17 the Court, but I think that when you talk about 70 or 80,000
18 pages, many of those pages will be scanned pages of bankruptcy
19 pleadings in New Jersey that have absolutely nothing to do with
20 this case at all.

21 The essence of this case is contained in the 500-plus
22 pages of the ATF report that was provided to the defense on
23 February -- as Mr. Steinberg says, was received by the defense,
24 shipped out of our office on February 15th and received on
25 February 19th.

1 In addition to that, all of those 70 or 80,000 pages
2 are not text documents. They are scanned, canceled checks.
3 They are photographs. They are transcripts, double-spaced
4 transcripts. Quite frankly, Judge, Mr. Murray came onto this
5 case about six weeks ago and, again, not having the same
6 responsibilities and obligations as defense counsel, and we
7 understand that, but certainly will be prepared and ready to go
8 to trial. We're certainly ready to go to trial. We have
9 submitted our response to the motions to continue.

10 I'm at a disadvantage, obviously, at this point not
11 understanding or not knowing what's recently been submitted to
12 the Court, but we stand by our previous submittals. We believe
13 that this is a case that at its essence is about a man who
14 hired another man to burn down a building. Origin and cause is
15 not complicated. We have a man that's going to come into this
16 courtroom and testify: I had gasoline. I poured the gasoline.
17 I lit the gasoline.

18 The ATF reports back up that testimony. The ATF
19 scientific reports which are very short, very simple say debris
20 taken from certain areas within the -- from the fire in fact
21 tested positive for gasoline confirming the testimony of the
22 arsonist.

23 Again, origin and cause is not the issue here. The
24 issue here is whether or not a jury will believe Mr. Robert
25 Rodriguez when he testifies. That's the -- that's the kernel

1 and the essence of this particular case is the individual who
2 says he was hired by Mr. Jariwala going to be believable to the
3 jury.

4 So with that in mind, Judge, I think that we should be
5 going forward. This is a case -- there is no mystery to the
6 defense two years ago when Mr. Steinberg was first retained
7 that this was an arson investigation. Mr. Jariwala knows that
8 he was the subject of suspicion from early on. Mr. Jariwala
9 has been sued by the insurance company saying, "We are not
10 going to pay for the claim that you and your business
11 associates have submitted in regards to this fire."

12 So to say that we're unprepared I think really misses
13 the mark. And again, the 60,000, 70,000, 80,000 pages of
14 discovery in this matter, as the Government has repeatedly
15 submitted to the Court in its responses, the essence of this
16 case is in the ATF report that consists of about 500-plus
17 pages.

18 It is the road map and the guide to this case. And
19 certainly, while I can well understand defense -- the defense's
20 desire to review all of the documents, a great many of those
21 documents that were submitted that were gathered in the course
22 of this investigation simply will not be used. We intend, Your
23 Honor, to give by the beginning of next week to defense counsel
24 our witness list. We have already provided a witness list in
25 this particular matter. We provided that on February 15th of

1 2013.

2 We're going to whittle that witness list down to about
3 25 witnesses. We will also provide to defense prior to trial
4 next week sometime, as soon as we have finalized it, our
5 exhibit list. We want to be as -- as defense friendly as we
6 can in providing -- in trying this case as far as giving the
7 defense what we believe they need or that they will need from
8 us in regards to this particular case.

9 I would be happy to answer any question that the Court
10 might have.

11 THE COURT: All right. Thank you.

12 MR. STEINBERG: May I briefly reply, Judge?

13 THE COURT: I have a couple of questions first.

14 MR. STEINBERG: I'm sorry.

15 THE COURT: Thank you. In dealing with the U.S.
16 Attorney's office in this district as frequently in drug cases
17 where there's much more evidence than in this case, the U.S.
18 Attorney's Office has in some instances identified, as you have
19 today, the focus of the Government's case in terms of what you
20 think to be inculpatory evidence, the 500 pages that provides
21 the overview and road map and the report by the ATF.

22 What other efforts has the U.S. Attorney done or
23 anticipates doing to target both inculpatory and exculpatory
24 evidence that's in the voluminous discovery that's been
25 provided?

1 MR. ANDERSON: Early on, probably within the first
2 week of -- after the arraignment in this particular matter, I
3 think it was either on Friday or a Saturday, we had lengthy
4 discussion, probably an hour discussion with the defense,
5 specifically with Mr. Giacomini, outlining our case and what we
6 believed were the significant pieces of evidence and the
7 significant documents within the discovery that we have
8 provided to the defense that particular attention ought be paid
9 attention to.

10 We have really literally withheld nothing. If
11 anything, I think the Government could be faulted here. The
12 only reason that we could be faulted is perhaps we have
13 provided too much. But again, rather than be accused of
14 withholding anything that might be -- that might be in our
15 possession, we tried to turn over everything we possibly can.

16 Now, we have not -- I have not identified anything,
17 Your Honor, within the evidence that has been turned over to
18 the defense anything that I would consider to be Brady material
19 indicating someone else has committed this crime other than
20 early on in the investigation several notations were made about
21 other possible suspects. Those reports have, indeed -- they
22 are part of the ATF packet that's been turned over to the
23 defense.

24 So I guess what I'm -- a lengthy response to your
25 simple question is we have tried to discuss with the defense

1 those portions of the evidence that have been turned over to
2 them that we believe are important and significant. We have
3 certainly not -- while we haven't said this is an exculpatory
4 piece of evidence, the reason we haven't done that is because
5 we don't believe much of what we've turned over qualifies -- in
6 fact, we don't believe anything qualifies as Brady material at
7 this point, Judge.

8 THE COURT: Thank you.

9 MR. ANDERSON: Anything else, Judge?

10 THE COURT: No, unless there's something that you wish
11 to say.

12 MR. ANDERSON: No, Judge.

13 THE COURT: Mr. Steinberg.

14 MR. STEINBERG: Judge, first I think it was important
15 for you to know I was never involved in any of the civil cases,
16 never appeared, never advised anyone and was not part and
17 parcel of anything that happened in the civil case.

18 Two, this is just an example. The Government
19 obviously has a different view -- and I don't expect them to
20 have the same view as the defense because that's not their
21 role.

22 But I anticipate that the Government at the time of
23 trial will make, if you will, a big to-do, to use a term of
24 art, about the amount of insurance that was on this premises.
25 And if you would just limit yourself to the 500 pages that the

1 Government says we should limit ourselves to, that becomes a
2 big deal and you say to yourself, my goodness, why was there
3 this much insurance on this property.

4 But if you take the time to read the discovery, you
5 come across gems like this, which was an investigation done as
6 part of this by the New York office. And I don't know if the
7 Court's aware of this, but there was an Assistant U.S. Attorney
8 by the name of Sarah Coyne, C-O-Y-N-E, out of the Eastern
9 District of New York who issued subpoenas.

10 And lo and behold, prior to Mr. Jariwala's involvement
11 or knowledge of this property, there was a \$12 million
12 insurance policy that was taken out to the benefit of Fidelity
13 Bank of Florida and that appears, based on this document, to be
14 in about 2009. And the period, according to this document, of
15 coverage is December 21st, 2009 through March 21st, 2010. As
16 you know, the fire allegedly occurred in September of 2010.

17 The document goes on to say the coverage totals over
18 12 million. The contact information for the NIA Group, which
19 is the insurer, is in Somerset, New Jersey, and then it has the
20 Fidelity Bank of Florida.

21 Well, this to me is important material because it
22 seems to belie the suggestion that the defendant went out and
23 got this overwhelming insurance policy in anticipation of
24 burning it down when, in fact, prior to his participation in
25 this particular purchase there was a \$12 million insurance

1 policy already in place which I had no idea about until we came
2 across this document. And this is the kind of gem, if you
3 will, that's important.

4 So now we have to figure out how to get subpoenas out
5 to NIA Group in New Jersey so we can get copies. And then it
6 appears that the entity that took out the insurance policy was
7 CJM. Now, that will come up in the trial because they're going
8 to suggest CJM was the defendant's alter ego and that he was
9 CJM. Well, now we know he wasn't CJM, because CJM before his
10 involvement took out a policy for \$12 million. Now, I can't
11 get ready for the case because of things like this.

12 And when the Government says they're going to be,
13 quote, defense friendly, that's the tempest in the teapot. And
14 what I mean by that is the fact that -- I don't want their
15 friendship. They're nice people, but I'm not here to be their
16 friend. I'm here to represent and defend my client without the
17 friendship of the Government. This is a system that is geared
18 towards not this kind of, quote, friendship where the defense
19 has to rely on the very people who are trying to lock him up
20 for 15-plus years. And we're supposed to look to them for
21 guidance? I don't think so.

22 And this is just one example, Judge. And how many
23 others are there that we might be able to come up with? The
24 Government, of course, just wants to limit this and say here's
25 this case; just focus on this. And the defense says well, wait

1 a second. It is more than that. And it is important to know
2 the history.

3 So this is but one example that we've come across.
4 And that's my concern. If you force me to go to trial, I will
5 not be prepared and I will not be effective. And someone will
6 determine, who is much brighter than me, if, in fact, this was
7 a fair trial. Thank you.

8 THE COURT: Thank you. Anything further?

9 MR. STEINBERG: No.

10 THE COURT: Anything further?

11 MR. ANDERSON: Government has nothing further.

12 Thanks, Judge.

13 THE COURT: Thank you.

14 Well, just on some housekeeping matters before we move
15 to what we have spent the lion's share of the time this morning
16 addressing, there are a number of motions that are associated
17 with disclosure which are within the Court's order governing
18 this trial. We haven't addressed those. We have addressed
19 three motions and then the motion to continue.

20 But insofar as the defendant has motions pending
21 relating to the release or disclosure of information or
22 materials that are already addressed and provided for within
23 the Court's order, discovery order on this case, those motions
24 will be granted in part and denied in part.

25 It will be granted to the extent that those materials

1 have been produced or that they're required to be produced
2 pursuant to the Court's discovery order. And to the extent the
3 motion is seeking relief in excess of what's -- what the
4 Court's provided in the discovery order, those motions are
5 denied.

6 On the motion to suppress statements, that motion for
7 the defendant's comments is withdrawn.

8 On the motion to suppress the fruits of the search
9 warrant, that motion at this time is considered moot. If
10 during the course of trial something surfaces, the Court will
11 address it at that time.

12 Relating to the motion as to the confidential
13 informant, the identity of informants, the Court again
14 considers that motion mooted.

15 Turning now to the motion to continue, the Court
16 understands that that motion is sought under the ends of
17 justice provision in the Speedy Trial Act. It's -- it's the
18 Court's conclusion that -- well, the test and the requirement
19 is reasonable time for effective preparation. This case has
20 been subject to one continuance already. The Court is not of
21 the opinion that effective counsel requires counsel to read
22 every bit of discovery. If that were the test -- there are
23 many, many cases in this district and other districts which
24 entail the disclosure of vast amounts of data characterized as
25 gigabytes or whatever. If this is -- if this is the standard,

1 then no case would go to trial within the Speedy Trial Act or
2 close to the Speedy Trial Act, and that's not the Court's view
3 of what Congress intended when they passed that law and
4 afforded specific rights to the defendant as well as to the
5 public on the Speedy Trial.

6 I read through the ex parte motion and conclude that
7 even considering the ex parte motion and the disclosure of
8 information which can be characterized as strategic that
9 particularly as to efforts to retain experts there's really no
10 clear indication in that motion and the other prior motion
11 before the ex parte motion was filed that those experts would
12 actually assist the defendant's case.

13 It's -- it's the Court's decision to deny the second
14 motion for reconsideration of the original motion to continue.
15 The Court is of the conclusion that the time that has elapsed,
16 both following the defense -- defendant's indictment and
17 arraignment and preceding that that there's been reasonable
18 time for effective preparation in this case. Again, we see
19 drug cases, white-collar crime cases, child pornography cases
20 with vast amounts of evidence disclosed by the Government.

21 I have never had a defense attorney make any
22 representation that they need to read every bit of discovery.
23 It is the Court's view that the defendant -- the Government has
24 provided, both through meetings and otherwise, the outline of
25 its case. The defendant has an understanding of his

1 relationship to this case, the insurance policies and the
2 accusations and evidence relating to that.

3 This case from my perspective is a case where the
4 Government really is called to prove beyond a reasonable doubt
5 who, what, when, where and how. Juries certainly are
6 interested in the why component which appears to be the search
7 through the documents that the defense is engaged in at this
8 time.

9 And so with that, the case will stay on track. I
10 would note, and this was covered in the first, if not the
11 second, order relating to defense request to continue, that at
12 the time of the detention hearing I was unambiguously clear
13 that this case was moving to trial and that it would not be
14 unnecessarily delayed. We've got two defendants on this
15 indictment that are waiting in jail -- in a jail setting where
16 very little is available to them. They have -- it is
17 reasonable to understand that their sentencing will be deferred
18 pending the trial in this case, and those -- those defendants
19 are entitled to a timely disposition of their case without
20 unreasonable periods of time associated with a defense
21 strategy.

22 It is also my observation, and perhaps this is
23 unfounded or unreasonable, and if so, I apologize in advance,
24 but it is my observation that were the defendant now detained
25 this case would be moving to trial without motions to continue.

1 Is there anything else that requires the Court's
2 attention?

3 MR. ANDERSON: Judge, there was one motion that we
4 haven't addressed. It is concerning coconspirator
5 statements --

6 THE COURT: Oh, yes, thank you.

7 MR. ANDERSON: -- and Bruton. There's not going to be
8 any Bruton issues here. The Court had previously ruled on
9 another James hearing-type motion. The Government asserted law
10 of case as our response to the motion made by -- by Mr.
11 Jariwala.

12 THE COURT: Yes. Thank you for reminding me. It is
13 my intent to deny that motion. My experience with James
14 hearings has not been particularly positive. It seems as
15 though we spend our time at the James hearing and also at trial
16 and it does not -- it is not particularly efficient.

17 Any other matters that I might have forgotten? And we
18 will be entering an order -- a written order in this case.

19 MR. ANDERSON: No, Your Honor. Thank you.

20 MR. STEINBERG: Does the Court --

21 THE COURT: Mr. Steinberg.

22 MR. STEINBERG: Does the Court require that the
23 coconspirator statements be denoted and provided to the defense
24 in advance of the trial so that at least we will know what
25 statements the Government intends to seek to introduce under

1 that exception?

2 THE COURT: I -- I cannot recall precisely what falls
3 within the scope of the discovery order.

4 Mr. Anderson, what is your intent regarding that? I
5 guess the --

6 MR. ANDERSON: We will --

7 THE COURT: -- the question is a summarization of the
8 statement from the Government.

9 MR. ANDERSON: That is not required under your prior
10 discovery order of February 15th of 2013. We have provided
11 either transcripts or recordings or reports of interviews of
12 all of the coconspirators in this matter. In addition, there's
13 one other witness that will be testifying that may very well
14 give us testimony that would qualify under the coconspirator
15 exception.

16 But we have provided by way of discovery all of the
17 statements or the substance of the statements to the defense.
18 They're easily ascertainable from those reports. They will be
19 statements that have been made by Mr. Trevino, Mr. Rodriguez,
20 Brenda Guerrero is the other party that comes to mind that may
21 have some coconspirator-type statement testimony in this
22 particular matter, Judge.

23 THE COURT: Have the transcripts of the change of plea
24 pleadings been provided?

25 MR. ANDERSON: We have -- we did not order those up

1 from the court reporter, Your Honor. We certainly -- we have
2 not ordered those up, Judge, no.

3 THE COURT: All right.

4 MR. STEINBERG: Judge, my concern is, again, here we
5 go, oh, it is all in the discovery. The point is this Court is
6 required under the law to make findings before the introduction
7 of statements at some point in time. They don't just come in.
8 The Court has to make a finding. But the easiest way to do
9 that is at least tell both the Court and the defense, here are
10 the statements that we're seeking to introduce under this
11 exception so we know what they are and be specific about them
12 because to say, well, we're going to seek to introduce
13 everything is disingenuous at best so one would think if not
14 for the defense convenience but for the convenience of the
15 Court so the Court can make the appropriate findings, as it is
16 required to do under the case law, that we identify the
17 statements.

18 MR. ANDERSON: We will certainly identify any of those
19 types of -- well, those type of statements, again, are readily
20 identifiable. We are -- we understand the foundation
21 necessary, and we will provide that foundation. We may be
22 offering some statements provisionally, but, Judge, we
23 understand what 801 requires. We have provided to the defense
24 the sum and substance of coconspirator statements.

25 There are just a few. There are not many. Again, we

1 think that we have satisfied our obligation per your court
2 order in addition to existing law.

3 THE COURT: Well, it is not my inclination to require
4 the Government to make essentially a written James submission.
5 I certainly know, as the attorneys do, what the admissibility
6 standard is. To the extent that there are statements that the
7 defense believes are inadmissible hearsay and do not fall under
8 the coconspirator statement exclusion from hearsay, the
9 defendant counsel may object at the time those statements are
10 sought to be elicited from the witness, and we can handle it in
11 that fashion.

12 In the past we have handled it by -- by conditional
13 admission and then a later determination that the elements
14 either have or have not been made with a limiting instruction,
15 if need be.

16 Anything further?

17 MR. ANDERSON: Not on behalf of the United States.
18 Thanks, Judge.

19 MR. STEINBERG: No, thanks.

20 THE COURT: Thank you. I appreciate your time today.
21 Thank you, gentlemen.

22 If you have any questions about the technology, please
23 contact Abby and she will make herself available. As long as
24 I'm not in this courtroom, you can come in. And certainly the
25 U.S. Attorney's Office is very proficient, but if the defense

1 team needs access to the courtroom to gain a level of
2 familiarity and comfort with the use of the technology by the
3 attorneys or by witnesses, feel free to catch Abby and she will
4 walk through that with you and you can experiment with the
5 smart screens and gain a level of comfort.

6 We will be doing an overview the day of trial as to
7 the Court's practices. There's nothing really surprising
8 concerning the Court's practices. Sometimes there are
9 questions about where attorneys stand and the small podium and
10 the big podium and all that. I would -- probably the most
11 repeated comment by jurors made in -- following trials, both
12 civil and criminal, is that jurors have a hard time hearing
13 witnesses and the attorneys themselves, and so I will use this
14 brief time now to just remind counsel to be conscientious about
15 where you are in relation to the microphone because these are
16 significant -- trials are significant and it is usually
17 problematic if the impaneled jury can't hear the attorney or
18 the witness.

19 And so, again, feel free to talk to Abby about the
20 technology, about any questions that you have, about matters
21 that surface during your experience as trial lawyers because
22 she sits through all of those final pretrial conferences and
23 sort of has a -- she has a -- she's better than I am in terms
24 of remembering what needs to be covered.

25 MR. ANDERSON: Couple of questions, Judge. 9:00 to

1 5:00 will be the court hours for the trial or 8:30 to 5:00?

2 THE COURT: It may be 8:30 because Mr. Jariwala is not
3 detained. Frequently we make it 9:00 in order to get the jury
4 in and transport people that are detained. I guess I would be
5 happy to hear input on the court hours for the trial in this
6 case, if you have any preference.

7 The morning time, whether it is 8:00 to 8:30 or 8:00
8 to 9:00 during the course of trial is reserved for attorneys to
9 come in. You don't need an appointment if you have issues. If
10 you anticipate a problem with a witness or a fight over
11 documents, I like to hear about those before trial starts or
12 during the noon recess or whatever.

13 Any preference on your part in terms of the time of
14 trial? And the first -- the first day we won't begin that
15 until 10:00, but the attorneys are asked to report at 8:00.

16 MR. ANDERSON: I take it, then, the Court -- you have
17 anticipated my next question. If we file motions in limine, I
18 take it we would take them up the morning that trial commences?

19 THE COURT: Yes.

20 MR. ANDERSON: And in regards to hours, Judge, I have
21 never done this, and I have not talked with anyone on my team
22 about this, but I'm going to throw it out for consideration.
23 The courtroom deputy is looking at me like uh-oh. I was going
24 to suggest, Judge, that the Court consider an 8:00 to 2:00, a
25 break maybe at 10:00, 10:30 and maybe another break at 12:00,

1 12:30 and go straight through, then we have three hours in the
2 afternoon to prepare for the next day. I throw that out only
3 as a suggestion. I have never tried that. I heard that those
4 type of hours were being maintained by a court in another
5 district and the attorneys seemed to like it pretty well.

6 I don't know what it would be like here where we have
7 jurors coming from Wheatland and or Torrington. Perhaps that
8 is not practical.

9 THE COURT: Well, I, too, have heard those
10 recommendations at judge conferences. I came back and talked
11 to chambers staff and the courtroom deputy about that and the
12 conclusion was that that would significantly shorten our trial
13 time because I'm very conscientious about keeping the trial
14 going and not exceeding the time given for breaks so I have
15 more on-bench time than under the old system.

16 So we talked about that and basically abandoned it
17 concluding that it would unnecessarily limit the trial time.

18 MR. ANDERSON: I threw it out as a mere suggestion,
19 Judge. I'm certainly not -- you tell us when to be here, we
20 will be here.

21 THE COURT: Well, that first day I don't mean to catch
22 anyone flat-footed by talking about trial matters today. I
23 appreciate your bringing the trial days up. But we can address
24 that on that first day when we will have a couple days while
25 the venire is oriented and gets into the courtroom.

1 I am anticipating calling many more prospective jurors
2 because of the potential that jurors have read or heard
3 something about this case that jurors might represent would be
4 hard to put out of their mind. And so I think we have more of
5 a potential for problems in that area.

6 Anything else?

7 MR. STEINBERG: Just want to say for the record in
8 response to the Court's colloquy, the motion would have been
9 made regardless of Mr. Jariwala's status, had he been detained
10 or not, so I want that to be absolutely clear. Thank you.

11 THE COURT: Anything further?

12 MR. ANDERSON: Not on behalf of the United States.

13 THE COURT: Mr. Steinberg.

14 MR. STEINBERG: No.

15 THE COURT: Thank you. Thank you again for your time
16 this morning. We will stand in recess until call.

17 (Proceedings concluded 9:50 a.m., April 29, 2013.)

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5 I, JANET DAVIS, Federal Official Court Reporter for
6 the United States District Court for the District of Wyoming, a
7 Registered Merit Reporter and Federal Certified Realtime
8 Reporter, do hereby certify that I reported by machine
9 shorthand the foregoing proceedings contained herein on the
10 aforementioned subject on the date herein set forth, and that
11 the foregoing pages constitute a full, true and correct
12 transcript.

13

14 Dated this 28th day of October, 2013.

15

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17

18

/s/ Janet Davis

19

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JANET DAVIS
United States Court Reporter
Registered Merit Reporter
Federal Certified Realtime Reporter

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